

REGULATORY UPDATES (FINANCIAL SERVICES) August 2019 Issue



To maintain the financial stability and facilitate the economic growth of Hong Kong, regulators have been reviewing and establishing different legal framework regularly for financial institutions. In this month, the Hong Kong Monetary Authority (HKMA), Securities and Futures Commission (SFC) and Insurance Authority (IA) have the following updates:

Revised Return of Certificate of Compliance and Return of Capital Adequacy Ratio

The Hong Kong Monetary Authority (HKMA) published a circular regarding changes to the Return of Certificate of Compliance (MA(BS)1F) (Certificate) and Return of Capital Adequacy Ratio (MA(BS)3) (CAR Return) on 5 July 2019.

Pursuant to the Banking Ordinance and the Banking (Exposure Limits) Rules (BELR), the Certificate is revised to replace and add a new reporting field to support the implementation of the new 50% land exposure limit under the BELR. While the CAR Return is revised to collect a new risk-weighted amount on sovereign concentration risk and introduce a new part to collect the detailed breakdown of that amount. Authorized institutions (AIs) are required to submit the revised returns starting with the reporting position at the end of September 2019. The HKMA also reminds the AIs to follow the reporting instructions and submit additional information as set out in Annex 2 of the circular.

[Read more on HKMA's website](#)

[Annex 1](#)

[Annex 2](#)

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Stored Value Facility Sector: Money Laundering and Terrorist Financing Risk Assessment Report

The HKMA published the Money Laundering and Terrorist Financing Risk Assessment Report (Report) for the stored value facility (SVF) sector on 19 July 2019.

The analysis in the Report confirms that the SVF sector continues to carry a medium level of money laundering and terrorist financing (ML/TF) risk. While the majority of the SVF sector remains characterised by lower risks due to the small stored value, limited functionality and predominant use for transport and low value retail transactions, ML/TF risks are emerging from functions such as overseas cash withdrawal, cross-border remittance and person-to-person fund transfers. The assessment and recommendations in the Report would be incorporated into an enhanced framework of SVF account management and amendments would be made as appropriate to the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Stored Value Facility Licensees). The HKMA reminds the SVF licensees to study the Report and consider the relevant insights and implications in order to review and update their institutional ML/TF risk assessments accordingly.

[Read more on HKMA's website](#)

New measure to protect client assets

On 8 July 2019, the Securities and Futures Commission (SFC) issued a circular to remind the intermediaries of their obligations to comply with the requirements under the Code of Conduct for Persons Licensed by or Registered with the SFC (the Code of Conduct) when being in possession or control of client assets.

The SFC found some cases that the standard Terms and Conditions entered into between intermediaries and authorised institutions (AIs) with respect to current, deposit or securities accounts that are client or trust accounts (Client Asset Accounts) contain clauses which grant AIs a right of set-off or lien. This is incompatible with the requisite standard

of protection afforded to client assets under the Code of Conduct. Consequently, the SFC introduced a standardised acknowledgement letter which is to be adopted and duly signed by both intermediaries and AIs. The key elements of the acknowledgement letter include the notification of purpose clauses, the no-recourse clause and the conflict clauses. Intermediaries are required to have the countersigned letters in place before depositing any client money or securities into any new Client Asset Accounts. The transition period for implementing this requirement ends on 31 July 2020, where the SFC expects the countersigned letters are in place for all applicable Client Asset Accounts.

[Read more on SFC's website](#)

[Acknowledgment Letter Template for Trust or Client Accounts opened with Banks holding Client Assets](#)

SFC reprimands and fines Celestial Commodities Limited and Celestial Securities Limited \$6.3 million for mishandling client money

On 10 July 2019, the SFC reprimanded Celestial Commodities Limited (CCL) and Celestial Securities Limited (CSL) and fined them \$4.9 million and \$1.4 million respectively for regulatory breaches and internal control failures relating to mishandling of client money.

The SFC found that CCL transferred approximately \$44 million between January 2009 and December 2016 from its client accounts to pay monthly commission rebates to its account executives. The SFC also found that CSL effected payments totaling \$40 million on 8 July 2015 from its client trust accounts into CCL's client trust accounts in an intra-day fund swap arrangement to allow CCL meet various margin calls from the Hong Kong Exchanges and Clearing Limited on time. CCL and CSL are concluded to be failed to implement proper controls to safeguard client money and supervise its staff in handling it.

[Read more on SFC's website](#)

SFC reprimands and fines Glory Sun Securities Limited \$1.2 million and suspends its current and former responsible officers

On 15 July 2019, the SFC reprimanded and fined Glory Sun Securities Limited (Glory Sun) \$1.2 million for failing to diligently supervise its account executives and implement effective controls to ensure compliance with the short selling requirements.

The disciplinary action arose from a case where a Glory Sun account executive was convicted by the Court for illegal short selling in Coslight Technology International Group Limited (Coslight) shares on multiple occasions in August 2015. The SFC found there was no record of the purported reviews of the



trading activities of its account executives by the responsible officers. Consequently, Glory Sun's responsible officer, Ms Eva Wong, and former responsible officer, Mr Alfred Lam Wai Kwong, were suspended for six months for the failures in preventing the placing of short sale orders to the market.

[Read more on SFC's website](#)

Guideline on Enterprise Risk Management (ERM) for authorised insurers

The Insurance Authority (IA) published a Guideline on Enterprise Risk Management (Guideline) to outline the objectives and requirements on ERM and the Own Risk and Solvency Assessment (ORSA) for authorised insurers on 5 July 2019.

To nurture a sound risk culture in the industry, the IA issued the Guideline to aid authorised insurers in establishing an effective ERM framework to identify, assess and mitigate risks. The board of directors of an authorised insurer is considered to be responsible for ensuring such framework is put in place and overseeing the effectiveness of it. The Guideline documented the elements constituting the framework, namely a) an appropriate governance structure; b) a risk appetite statement; c) ERM policies and procedures; d) a feedback loop mechanism that ensures continued effectiveness; and e) conducting an ORSA on a regular basis. The IA is going to adopt a principles-based approach for the Guideline, hence authorised insurers are expected to give a satisfactory explanation should they choose to deviate from the specified requirement. The Guideline will take effect from 1 January 2020.

[Read more on IA's website](#)

[Guideline](#)

Pecuniary penalty imposed on regulated persons

The IA issued a circular in relation to the established Guideline on Exercising Power to Impose Pecuniary Penalty in Respect of Regulated Persons (Guideline) under the Insurance Ordinance (Cap. 41) (Ordinance) on 12 July 2019.

With the aim to protect policy holders and promote proper standards of conduct, the IA considers to impose a pecuniary penalty on regulated persons such as a licensed insurance intermediary, responsible officer and a person concerned in the management of a licensed insurance agency or insurance broker company under certain circumstances and relevant factors, including a) nature, seriousness and impact of the conduct; b) the behaviour of the regulated person; and c) the previous disciplinary record and compliance history of the regulated person. It is recommended to read the Guideline in conjunction with the relevant provisions of the Ordinance, and any relevant rule, regulation, code and guideline made or issued under the Ordinance. The Guideline will come into effect on 23 September 2019.

[Read more on IA's website](#)

[Guideline](#)

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